—the defendant knowing her condition. The knowledge of the defendant, differentiates this case from the principal case. See also *Barbee* v. *Reese*, 60 Miss. 960, and other cases, *pro* and *con*, collected in note 14 L. R. A. 666; 8 Am. & Eng. Enc. Law (2d ed.), 865–868.

As to the recovery for mental anguish in telegraph cases, see note to *Western Union Tel. Co.* v. *Goddin*, 3 Va. Law Reg. 222, by Prof. Burks.

PARTNERSHIP—ACTION BY ONE PARTNER AGAINST COPARTNER, AT LAW —BREACH OF STIPULATION.—Plaintiff and defendants were partners in the business of growing and shipping fruit. Under their articles, it was the duty of the defendants to provide crates for shipping. By reason of a breach of this stipulation, damages resulted to the firm. During the continuance of the copartnership, plaintiff brought an action at law against defendants to recover his proportion of the damages thus suffered—the complaint alleging that there were no partnership debts and no unsettled accounts between the parties save the claim asserted. On demurrer it was *Held*, That the action at law would not lie—*Miller* v. *Freeman* (Ga.), 36 S. E. 961.

The opinion in this case, by Simmons, C. J., contains a learned discussion of the principle under which one partner may sue another at law, for breach of some stipulation in the partnership articles. In Story on Partnership, 218, the rule is stated to be that "Wherever there is an express stipulation in the partnership articles, which is violated by any partner, an action at law (either assumpsit or covenant, as the case may require) will ordinarily lie to recover damages for the breach thereof." Under this statement of the rule, the plaintiff in the principal case might have maintained his action. The court holds, however, that Judge Story's statement is too broad, and is not sustained by the authorities, and that the true rule is, that laid down in *Hill* v. *Palmer*, 56 Wis. 130, 14 N. W. 23, viz., "If the damages resulting from a breach of a covenant or stipulation in the partnership agreement by one partner, *belong exclusively to the other partner*, and can be assessed without taking an account of the partnership business, covenant or assumpsit may be maintained by the injured partner against the other for such damage." The test as stated by Collyer (Partn., 196) is, whether the damage flowing from the breach is damage to the partnership, and the recovery therefore payable into the firm treasury, or is individual to the plaintiff. To the same effect is Lindley on Partn. (Rapalje's Ed.) p. 456.

"Where, therefore," says the court, "the stipulation is an agreement by one partner individually to do something for the benefit of the other individually, and imposes an obligation binding the one personally to the other, its breach gives a right of action at law, if the damages can be assessed without an investigation of the partnership accounts. But where the stipulation is for the benefit of the partnership, and consequently of both partners, neither partner alone has a right, the partnership relation existing, to sue in his own name, and at law, for the damages arising from its breach. There was in the present case no covenant to furnish crates, but merely an agreed distribution of partnership duties, by which the duty of securing crates was put upon the defendants, while the cost of the crates was to be defrayed by the partnership. The defendants did not agree to contribute the crates, but merely to see that crates were procured. The crates were to be used,

not by the plaintiff, but by the partnership; and the right to the profits was in the partnership, and not solely in the plaintiff. The damage arising from the breach was to the partnership, and the plaintiff was not damaged at all, except by the reduction of the amount he should receive of the partnership profits. Had there been losses, he would have been damaged only by having to contribute more to the payment of such losses. While the damage arising from the breach of the defendant's agreement was to the partnership, one cannot sue himself, or be in the same action party plaintiff and defendant, and therefore the partnership could not maintain a suit against the defendants. Further, the compensation owed to the partnership by the defendants for their breach of duty was a partnership asset, and one partner could not collect and keep it. 2 Bates, Partn. sec. 849. These rules—that a partnership cannot sue one of its members, and that one partner cannot recover from his copartner an amount due the partnership—are universally recognized, and the plaintiff sought to evade them by suing for only his *pro rata* share of the amount due the partnership. This cannot be done. See Id. sec. 1018. 'One partner cannot recover his share of a debt due to the partnership in an action at law prosecuted in his own name alone against the debtor.' *Vinal* v. *Land Co.*, 110 U. S. 215, 4 Sup. Ct. 4, 28 L. Ed. 124. And a suit against one of the partners does not in this particular differ from a suit against a stranger. While the partnership continues, whatever sum is due from the defendants on account of their breach of the partnership agreement is due to the partnership and not to the plaintiff alone, and must be considered as partnership assets. 'So long as the community relation subsists, neither party has a remedy at law in respect to the joint assets.' *Hunt* v. *Morris*, 44 Miss. 314."